537

SUPREME COURT OF THE UNITED STATES.

No. ~~35~~. 46

THE BANK OF THE UNITED STATES, PLAINTIFF IN ERROR,

VERSUS

ANDREW DONNALLY, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE WESTERN DISTRICT OF VIRGINIA.

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UNITED STATES OF AMERICA, *Western District of Virginia,* } *scilicit.*

BANK OF U. STATES *versus* ANDREW DONNALLY. } *In debt.*

Pleas held before the honorable Alexander Caldwell, judge of the District Court of the United States for the Western District of Virginia, at Clarksburg, on the ninth day of September, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the independence of the United States of America.

Be it remembered, that, heretofore, to wit: at rules held in the office of the clerk of the district court of the United States for the western district of Virginia, at Clarksburg, on the ninth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, came the President, Directors, and Company of the Bank of the United States, by Samuel H. Fitzhugh, esquire, their attorney, and sued out, thereof, a writ of capias ad respondendum against Andrew Donnally and Richard Steele, surviving partners of Andrew Donnally, Adam Steele, Richard Steele, William Steele, and Robert M. Steele, late firm of Steele, Donnally & Steeles; which writ, with the endorsement and return thereon endorsed, are in the words and figures following, to wit:

Capias. *The President of the United States to the Marshal of the Western District of Virginia, greeting:*

You are hereby commanded to take Andrew Donnally and Richard Steele, surviving partners of Andrew Donnally, Adam Steele, Richard Steele, William Steele, and Robert M. Steele, late firm of Steele, Donnally & Steeles, citizens and inhabitants of the State of Virginia, and of the judicial district aforesaid, if they be found in your district, and them safely keep, so that you have their bodies before the judge of the court of the United States for the western district of Virginia, at Clarksburg, on the rule day in October next, to answer the President, Directors, and Company of the Bank of the United States, in a plea of debt, $77,262; damages $25,000; and have then there this writ.

Witness, Alexander Caldwell, esq., judge of the United States for the said district, at Clarksburg, this ninth day of September, one thousand eight hundred and twenty-nine, and in the fifty-fourth year of the independence of the United States of America.

[L. S.] J. Y. DODDRIDGE, *Clk. U. S. Dist. Court.*

Endorsement on. [*Endorsement.*] Action debt, on writing for payment of money. No bail required.

FITZHUGH, *P. Q.*

[*Return.*] Executed on Andrew Donnally. The defendant resides in Kanhawa county. Travel 200 miles. Not executed on Richard Steele, the said Richard not being a citizen or inhabitant of the western district of Virginia. Return on.

J. W. PATTON, *D. M.*
B. REEDER, *M.*

And afterwards, to wit: at the October rule day, to which the said writ was made returnable, the same was returned with the return aforesaid thereon endorsed, and this cause was continued. Continuance at rules.

And afterwards, to wit: at rules held in the office of the clerk of the said court, in the month of November, in the year of our Lord one thousand eight hundred and twenty-nine, came the plaintiffs, by their attorney, and filed their declaration, with a copy of the note on which their action is founded annexed thereto; which declaration, and copy of the note, are in the words and figures following, to wit:

(DECLARATION.) Declaration.

District Court of the United States of America for the Western District of Virginia, held at Clarksburg. ss. Of November Rules, 1829.

The President, Directors, and Company of the Bank of the United States complain of Richard Steele and Andrew Donnally, surviving partners of Richard Steele, Andrew Donnally, Adam Steele, Robert M. Steele, and William Steele, late firm of Steele, Donnally & Steeles. As to the said Richard Steele, the marshal, &c. having returned no inhabitant, &c., this suit is as to him abated. And the said Andrew being in custody, &c. of a plea that he render unto them the sum of $77,262, which he owes to, and detains from them; for that whereas the said firm of Steele, Donnally & Steeles, in the life time of the said deceased partners, heretofore, to wit: at the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said note to the said plaintiffs, by which said note the said firm of Steele, Donnally & Steeles, then and there promised, as sureties of Campbell, Vaught & Co., to pay to the order of the President, Directors, and Company of the Bank of the United States, sixty days after date, without defalcation, twelve thousand eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposite of said bank at Louivsille, Kentucky, value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. By means whereof the said defendant became liable to pay unto said plaintiffs said sum of money in said promissory note specified, when the same became due and payable, according to the terms of said note. And although said sum of money has, by the terms of said note, been long due and payable, yet the said Andrew Donnally, Richard 1st count.

Steele, Robert M. Steele, Adam Steele, and William Steele, in the lifetime of the said Robert M. Steele, Adam Steele, and William Steele, and the said Andrew Donnally and Richard Steele, since the death of said Robert M. Steele, William Steele, and Adam Steele, have not, nor has either of them, nor has the said firm of Campbell, Vaught & Co., nor said David Campbell, paid unto said plaintiffs said sum of $12,877, or any part thereof; but to pay the same, or any part thereof to said plaintiffs, the said Andrew Donnally, Richard Steele, Robert M. Steele, William Steele, and Adam Steele, in the life time of said Adam Steele, William Steele, and Robert M. Steele, wholly refused, and the said Campbell, Vaught & Co., and David Campbell, and the said Andrew Donnally and Richard Steele have, ever since the death of said Adam, Robert M. and William Steele, hitherto wholly refused, and still refuse. By reason whereof an action hath accrued to said plaintiffs to demand and have of and from said Andrew Donnally said sum of $12,877, parcel of said sum of money above demanded.

2d count. And whereas, also, Andrew Donnally, Richard Steele, William Steele, Robert M. Steele, and Adam Steele, partners under the firm Steele, Donnally & Steeles, heretofore, to wit, on the 26th of June, 1822, and in the lifetime of Adam Steele, Robert Steele, and William Steele, since deceased, at Louisville, Kentucky, to wit, at the district aforesaid, with one David Campbell, and the firm of Campbell, Vaught & Co., made their certain other promissory note in writing, bearing date the 26th of June, 1822, and then and there delivered the said note to the said plaintiffs, and thereof promised jointly and severally, the said Campbell, Vaught & Co. as principals, and the said David Campbell and the said Steele, Donnally & Steeles as sureties, sixty days after date, to pay to the order of the President, Directors, and Company of the Bank of the United States, without defalcation, the sum of $ twelve thousand eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposite of said bank at Louisville, Kentucky, value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. By means whereof, and by force of the statute in such cases made and provided, the said defendant became liable to pay unto said plaintiffs said sum of money in said last mentioned note specified, when the same became due and payable, according to the tenor and effect of said last mentioned note. And although said sum of money in said last mentioned note specified, has, by the tenor and effect of said note, been long due and payable, yet the said Andrew Donnally, Richard Steele, Robert M. Steele, Adam Steele, and William Steele, in the lifetime of said Robert M., William, and Adam Steele, nor the said Andrew Donnally and Richard Steele, since the death of said Robert M., William, and Adam Steele, have not, nor has either of them, nor has the said David Campbell, or the said firm of Campbell, Vaught & Co, nor either of them, paid unto said plaintiffs said last mentioned sum of $12,877, or any part thereof; but to

pay the same, or any part thereof to said plaintiffs, the said Campbell, Vaught & Co. and the said David Campbell, have refused; and the said Andrew Donnally, Richard Steele, Robert M. Steele, William Steele, and Adam Steele, in the lifetime of said Adam, William, and Robert M. refused, and the said Richard Steele and Andrew Donnally since the death of said Robert M., Adam, and William Steele, have refused, and still refuse. By means whereof, an action hath accrued to said plaintiffs to demand and have of and from said Andrew Donnally the said last mentioned sum of $12,877, other parcel of said sum of $77,262 above demanded.

And also for that whereas the said Richard Steele, as to whom this suit by the return of the marshal, &c., no inhabitant, &c., hath abated, and the said Andrew Donnally, Adam Steele, Robert M. Steele, William Steele, in the life time of said Adam, William, and Robert M., since deceased, and whom the said Andrew Donnally hath survived, heretofore, to wit, on the 1st September, 1822, at Louisville, Ky., to wit, at the district aforesaid, were indebted to the said plaintiffs in other the sum of $25,754, for other money before that time loaned and advanced by the said plaintiffs to said firm of Steele, Donnally & Steeles, and at their like special and instance, and to be paid to said plaintiffs by the said defendants, Steele, Donnally & Steeles, when they to pay the same should be thereto afterwards requested. Nevertheless, the said Robert M. Steele, Andrew Donnally, Richard Steele, William Steele, and Adam Steele, in the life time of said William Steele, Adam Steele, and Robert M. Steele, and the said Andrew Donnally and Richard Steele, since the death of said Adam, William, and Robert M. Steele, have not, nor has either of them, paid unto said plaintiffs said last mentioned sum of money, or any part thereof, but to pay the same said Andrew Donnally, Richard Steele, William Steele, Robert M. Steele, and Adam Steele, in the life time of said William, Robert M., and Adam Steele, wholly refused, and the said Andrew and Richard, since the death of said Adam, William, and Robert M. Steele refused, and said Andrew still refuses, by means whereof an action hath accrued to said plaintiffs to demand and have of and from said Andrew Donnally said sum of $25,754, residue of the sum of $77,262 above demanded. 3d count.

And whereas also the said Andrew Donnally and Richard Steele, William Steele, Robert M. Steele, and Adam Steele, partners trading under the firm of Steele, Donnally & Steeles, heretofore, to wit, on the 26th day of June, 1822, and in the life time of said Adam Steele, Robert Steele, and William Steele, since deceased, at Louisville, in the State of Kentucky, to wit, at the district aforesaid, with one David Campbell, and the firm of Campbell, Vaught & Co., made their other note in writing; which said note, signed by the said firm of Steele, Donnally & Steeles, and dated the day and year aforesaid, is to the court here shown, and thereby promised jointly and severally, the said Campbell, Vaught & Co. as principals, and the said David Campbell and the said Steele, 4th count.

Donnally & Steeles, as sureties, sixty days after date thereof, to pay to the order of the President, Directors, and Company of the United States, without defalcation, the sum of $ twelve thousand eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposite of said bank at Louisville Ky., value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. And plaintiffs aver that said note in writing so as aforesaid made at Louisville, in the State of Kentucky, and payable at said place, was and is a writing without seal, stipulating for the payment of money; and that the same, by the law of Kentucky, entitled "An act to amend the law of proceedings in civil cases, approved February 4th, 1812," (an extract from which said law, duly authenticated under the seal of the said State of Kentucky, and duly certified, is to the court here shown,) is placed upon the same footing with sealed writings containing the like stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes having the same force and effect as a writing under seal. And although said sum of money, in said last mentioned note specified, has long been due and payable, according to the terms of said note, yet the said Andrew Donnally, Richard Steele, Robert M. Steele, Adam Steele, and William Steele, in the life time of said Robert M., Adam, and William Steele, and the said Donnally and Richard Steele, since the death of said Robert M., William, and Adam Steele, have not, nor has either of them, nor has the said David Campbell, or the said firm of Campbell, Vaught & Co., or either of them, paid unto said plaintiffs said last mentioned sum of $12,877, or any part thereof, but to pay the same, or any part thereof, to said plaintiff, the said firm of Steele, Donnally & Steeles, in the life of said deceased partners, and the David Campbell, and Campbell, Vaught & Co. refused, and the said defendant and Richard Steele, surviving partners of the late firm of Steele, Donnally & Steeles, still refuse. By reason whereof, an action hath accrued to said plaintiffs to demand and have of and from said defendant said last mentioned sum of $12,877, other parcel of said sum of money above demanded. *Yet the said Andrew Donnally, although often requested, hath not paid unto said plaintiffs said several sums of money above demanded, or any part thereof, but to pay the same the said Andrew Donnally hath refused and still refuses, to the damage of said plaintiffs, $25,000; wherefore they bring suit, &c.

*5th count, See page 9, [8.]

FITZHUGH, *P. Q.*

(*Copy of Note.*)

Copy note.

$12,877. *June 26th,* 1822.

Sixty days after date, we, Campbell, Vaught & Co. as principals, and David Campbell and Steele, Donnally & Steeles, as sureties, do promise to pay, jointly and severally, to the order of the President, Directors, and Company of the Bank of the United States, without defalcation, twelve thousand eight hundred and seventy-

seven dollars, negotiable and payable at the office of discount and deposite of said bank at Louisville, Ky., value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity.

CAMPBELL, VAUGHT & Co.
DAVID CAMPBELL.
STEELE, DONNALLY & STEELES.

1826, Sept. 28, Cr. the within note, by cash,	-	$102 50
Feb. 22, - - - - -	-	2,303 50
		$2,406 00

Common order.

Whereupon this suit being abated (in consequence of the return of the marshal upon the capias issued therein,) as to Richard Steele, on motion of the plaintiffs, the defendant Andrew Donnally having been arrested, and not appearing though thrice called, it was ordered that judgment should be entered for the plaintiffs, against said defendant, for the debt in the declaration mentioned and costs, unless the said defendant should appear and plead at the then next rules. And the cause was continued.

Office judgment.

And afterwards, to wit, at rules held in the clerk's office of the said court, at Clarksburg, in the month of December, in the year of our Lord one thousand eight hundred and twenty-nine, came the plaintiffs, by their attorney, and the defendant, Andrew Donnally, still failing to appear and plead, although ruled so to do, it was considered that the plaintiffs should recover against him the sum of $12,877, with interest thereon from the 28th day of August, 1822, till paid, (subject to a credit of $102 50 paid on the 28th day of September, 1826, and subject also to a further credit of $2,303 50 paid on the 22d of February in the year 1826, and their costs herein expended.) And the defendant in mercy, &c.

Appearance.

And afterwards, to wit: at a district court of the United States, held for the western district of Virginia, at Clarksburg, before the honorable Alexander Caldwell, judge thereof, on Wednesday the seventh day of April, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the independence of the United States of America, the defendant Andrew Donnally appeared, by Edwin S. Duncan, his attorney, and, on his motion, the office judgment rendered against him theretofore at rules was set aside. Whereupon the defendant demurred generally to each count in the declaration of the plaintiffs, and the plaintiffs joined in demurrer. The affidavit annexed to the plea of nihil debit, filed by the said defendant, on motion of the plaintiffs was rejected by the court as insufficient. The defendant also filed a plea of the statute of limitations in writing, to which the plaintiffs took time to reply. And arguments of counsel being heard on the defendants' demurrers to the counts in the plaintiffs' declaration, the court was of opinion that the first count in the plaintiffs' declaration was insufficient in law, and sustained the *the* demurrer

Affidavit rejected.

Entry of pleadings in this order set aside. See pages 11 and 12, [10.]

thereto. And arguments being also heard on the defendant's demurrers to the second and third counts in the declaration, the court was of opinion that the said counts were sufficient in law, and overruled the defendant's demurrer thereto. On motion of the plaintiffs, leave was granted them to amend their declaration, and the cause was remanded to rules, at the costs of the plaintiffs, for further proceedings to be therein had

Remanded to rules.

And afterwards, to wit: at rules held in the clerk's office of said court in the months of April, May, June, July, and August following, this cause was continued.

And afterwards, to wit: at a district court of the United States for the western district of Virginia, held at Clarksburg, before the honorable Alexander Caldwell, judge thereof, on Wednesday, the eighth day of September, in the year of our Lord last aforesaid, and in the fifty-fifth year of the independence of the United States of America, the parties appeared by their attorneys, and, by consent of the parties, the plaintiffs amended their declaration by adding a new count, numbered 'fourth count;' and the defendant filed his plea of nil debit to the whole declaration, and the plaintiffs took issue on the same, so far as it applied to their first, second, and third counts, and demurred generally to the same, so far as it related to their new or fourth count, and the defendant joined in demurrer. It was agreed between the parties that the plea of the statute of limitations, theretofore filed, should stand and be received as a plea, also, to the fourth count, and the plaintiffs demurred thereto, and the defendant joined in demurrer. And to the said plea of the statute of limitations to the first, second, and third counts, the plaintiffs replied specially, to which replication the defendant demurred, and the plaintiffs joined in demurrer, and this cause was continued.

For fourth count, see page 5.

Entry of pleas, &c. in this order set aside, see pages 11 and 12, [10.]

And afterwards, to wit: at a district court of the United States for the western district of Virginia, held at Clarksburg, before the honorable Alexander Caldwell, judge thereof, on Tuesday the fifth day of April, in the year of our Lord one thousand eight hundred and thirty-one, and in the year of American independence last aforesaid, the parties appeared by their attorneys, and, on motion of the plaintiffs, this cause was continued, at their costs, until the next term of the said court.

Continued.

And afterwards, to wit: at a district court of the United States, held for the western district of Virginia, at Clarksburg, before the honorable Alexander Caldwell, judge of said court, on Wednesday the seventh day of September, in the year of our Lord last aforesaid, and in the fifty-sixth year of the independence of the United States of America, the parties appeared by their attorneys, and, on motion of the plaintiffs, leave was granted them to add an additional or new count, which was accordingly filed, and was numbered 'fifth count,' and is in the words and figures following, to wit:

5th count.

"And for that whereas afterwards, to wit, on the 26th day of June, in the year 1822, at Louisville, in the State of Kentucky, to wit, at Clarksburg, in this district, the aforesaid Campbell, Vaught

& Co. as principals, and the aforesaid David Campbell and Richard Steele, Andrew Donnally, Adam Steele, Robert M. Steele, and William Steele, as securities, the said Richard, Andrew, Adam, Robert, and William, acting under the firm and style of Steele, Donnally & Steeles, by their certain writing obligatory, duly executed by them, without a seal, bearing date the same day, and here shown to the court, did promise and bind themselves, jointly and severally, to pay the plaintiffs, without defalcation, *an* another sum of twelve thousand eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposite of the said plaintiffs, at the aforesaid town of Louisville, in Kentucky, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. And the said plaintiffs in fact say that, though the said last mentioned sum of money, when due and payable according to the tenor and effect of said writing, to wit, on the 28th day of August, 1822, at the office of discount and deposite aforesaid, was duly demanded, the same was not paid by the said Campbell, Vaught & Co., David Campbell and Steele, Donnally & Steeles, or by any or either of them, nor have the said Campbell, Vaught & Co., David Campbell, and Steele, Donnally & Steeles, or any or either of them at any time paid the same, or any part thereof, but the same to pay they, and each of them, though often requested, have altogether failed, and refused, and still do refuse; and the said plaintiffs further in fact say that the said writing was duly made and payable at the aforesaid town of Louisville, a place within the commonwealth of Kentucky, and subject to laws thereof; and that the same writing, executed without a seal, was, at the time of its execution, and ever has been, and is now, by the laws of the said commonwealth of Kentucky, then and still in force, upon the same footing with a sealed instrument containing like stipulations, entitled to the same consideration in all courts of justice, and having, to all intents and purposes, the same force and effect as it would as if sealed. By reason whereof, the plaintiffs are entitled to demand and recover of the said Andrew Donnally, one of the said obligors in the said writing, the aforesaid sum of $12,877, with interest as aforesaid, other parcel of the debt above demanded."

To which fifth count the defendant filed the pleas of nil debit and statute of limitations in writing; to which pleas the plaintiffs demurred generally, and the defendant joined in demurrer. And, by consent of parties, the defendant obtained leave to file other pleas, until the then next term of the said court. And this cause was continued.

Entry of pleas, &c. in this order set aside, see pages 11 and 12, [10.]

And afterwards, to wit: at the April term of the said district court of the United States for the western district of Virginia, at Clarksburg, before the honorable Alexander Caldwell, judge thereof, in the year of our Lord one thousand eight hundred and thirty-two, and in the year of American independence last aforesaid, this cause was continued.

Continued

And afterwards, to wit, at a district court of the United States held for the western district of Virginia, at Clarksburg, before the

honorable Alexander Caldwell, judge of the said court, on Monday the third day of September, in the year of our Lord last aforesaid, and in the fifty-seventh year of the independence of the United States of America, the parties appeared by their attorneys, and by consent of parties, it was ordered that the former entries in relation to the pleadings from the filing of the several counts be set aside, and that the pleadings and demurrers filed do stand as follows: The counts in the usual form, as founded on a promissory note, and that for money lent, to be numbered first, second, and third counts, to all which the defendant has pleaded nil debit, and issue is thereon joined. To these counts the defendant has also pleaded the statute of limitations, to which the plaintiffs have replied specially, and the defendant has demurred to the plaintiffs' replication, and the plaintiffs have joined in that demurrer. The other counts, founded on, or noticing a statute law of the State of Kentucky, to be called the 'fourth' and 'fifth' counts. To these counts the defendant has demurred generally, and the plaintiffs have joined in demurrer. To these counts also the defendant has pleaded nil debit and the statute of limitations, to which pleas the plaintiffs have demurred, and the defendant has joined in demurrer. And arguments of counsel not having been concluded on this day, the cause was continued until the day following.

Entries of pleas, &c. set aside, and new entry.

First entry of judgment set aside. See next page.

And afterwards, to wit: at the same term of the same court last aforesaid, on Wednesday the fifth day of September, being the third day of the said term, before the same judge, the parties appeared by their attorneys, and the matters of law arising upon the demurrer of the defendant to the special replication filed by the plaintiffs to the plea of the statute of limitations, as pleaded to the three first counts in the declaration, being argued, it seems to the court here that the said replication, and the matters and things therein contained, are not sufficient in law to bar or preclude the defendant from the benefit of his said plea of the statute of limitations to said three first counts: it is therefore considered that said demurrer be sustained.

And the matters of law arising upon the defendant's demurrer to the fourth and fifth counts, and the plaintiffs' demurrer to the pleas filed by the defendant to the fourth and fifth counts, being argued, it seems to the court here that the fourth and fifth counts are not sufficient in law for the plaintiffs to have or maintain their aforesaid action; and that said pleas, and the matters and things therein contained, are sufficient in law to bar the plaintiffs from having and maintaining their said action as set forth in said fourth and fifth counts: therefore, it is considered by the court, that the plaintiffs take nothing by their bill, but for their false clamor be amerced; and that the defendant recover of the plaintiffs his costs by him about his defence herein sustained.

Judgment set aside. New entry of pleas and judgment.

And now at this day, to wit: on the day, in the year, at the place, and before the judge first herein aforesaid mentioned, on motion of the plaintiffs, the judgment rendered in this cause, on the third day of this term, "that the plaintiffs take nothing by their bill, &c." is set aside; and thereupon the plaintiffs have leave

to withdraw their demurrer to the plea of nil debit, so far as said plea is a plea to the fifth count of the declaration, and thereupon issue is joined upon said plea. And the parties now coming here by their attorneys, and the matters of law arising upon the demurrer of the defendant to the special replication filed by the plaintiffs to the plea of the statute of limitations, as pleaded to the three first counts in the declaration, being argued, it seems to the court here that said replication, and the matters and things therein contained, are not sufficient in law to bar or preclude the defendant from the benefit of his said plea of the statute of limitations to the three first counts: it is therefore considered by the court that said demurrer be sustained. And the matters of law arising upon the defendant's demurrer to the said fourth and fifth counts, and the plaintiffs' demurrer to the pleas of nil debit, and the statute of limitations to the fourth count, and the plaintiffs' demurrer to the same plea of the statute of limitations to the fifth count, being argued, it seems to the court that the fourth and fifth counts are not sufficient in law for the plaintiffs to have or maintain their aforesaid action; and that said pleas, and the matters and things therein contained, are sufficient in law to bar the plaintiffs from having and maintaining their said action, as set forth in the fourth and fifth counts: therefore it is considered by the court that the plaintiffs take nothing by their bill, but, for their false clamor, be amerced; and that the defendant recover of the plaintiffs his costs by him about his defence in this behalf sustained.

The following are copies of the written pleas, demurrers, replication, and joinder in demurrer, filed and referred to in the entries of the pleadings, to wit:

[*First plea, with affidavit annexed, and the demurrer thereon written, and the joinder in demurrer thereon also endorsed, to wit:*]

"ANDREW DONNALLY *Adst.* BANK OF THE UNITED STATES. } Federal court of the United States at Clarksburg, for the western district of Virginia. *In debt.* Plea of nil debit.

And the said Andrew Donnally, by Edwin S. Duncan his attorney, comes and defends the wrong and injury, when, &c.; and says that he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs hath above thereof complained against him; and of this he puts himself upon the country, &c.

"VIRGINIA, *Harrison, to wit:*

Andrew Donnally made oath before me, the subscriber, a justice of the peace for the said county, that the said note upon which the above action is founded, was not made by him, nor by any person by his, the said Donnally's, direction or authority, nor by Affidavit.

any of the persons alleged in the declaration to compose the firm of Steele, Donnally & Steeles, as far as he knows or believes.

Given under my hand this 8th day of September, 1830.

JOHN DAVIS, *J. P. H. C.*

Demurrer to plea nil debit.

And the said plaintiffs, by their attorney, say that they, by means of any thing in the first plea of said defendant alleged, ought not to be barred from having and maintaining their action aforesaid against said defendant on the fourth count of their declaration aforesaid; and that they are not bound by the law of the land to answer the same; and this they are ready to verify. Wherefore they pray judgment, &c.

FITZHUGH, *for Plaintiffs.*

Joinder in demurrer.

Joinder in demurrer.

DUNCAN, DODDRIDGE, } *for Defendants.*

Plea of the statute limitations.

[*Second Plea, to wit:*]

And the said defendant, for further plea, says that the plaintiffs their action thereof against him aforesaid ought not to have and maintain, because, he says, that the said action did not accrue within five years before the institution of this suit. And this he is ready to verify. Wherefore, &c.

E. S. DUNCAN, *Attorney.*

Replication to plea of the statute limitations.

[*Special Replication to said Plea, to wit:*]

And the said plaintiffs, for replication to the plea of said defendant by him above pleaded, say that they ought not to be barred from having and maintaining their action aforesaid against the said defendant by reason of the matters in said plea alleged, because, they say, that heretofore, to wit, on the 2d of May, 1823, within five years after the said sum of $12,877 became due and payable, they exhibited their bill in the district court of the United States of America for the district of West Tennessee, before the honorable John McNairy, judge of the court of the United States for said district, against William Campbell, of the firm of Campbell, Vaught & Co., principal debtors in said note in writing mentioned, on a mortgage executed by said William Campbell, to secure the payment of the sum of money in said note in writing specified. And such proceedings were thereupon had, that afterwards, to wit, at the June term, 1825, of said court, a decree was rendered against the said William Campbell for the debt aforesaid, and the sale of the premises in said mortgage mentioned. All of which things will more fully appear from a transcript of the record of said court, duly authenticated, and to the court now here shown. And said plaintiffs aver that William Campbell, in said record mentioned, is William Campbell, of the firm of Campbell, Vaught & Co., and not other or different; and that the said sum of $12,877 in said proceedings mentioned, and the sum of $12,877 in plaintiffs' declaration mentioned as parcels of the sum of

$, are the same, and not other or different; and that the action to which the plea aforesaid of said defendant is pleaded in manner aforesaid, was commenced within five years from the rendition of the decree aforesaid. And this they are ready to verify. Wherefore the judgment, and their debt and damages occasioned by the detention thereof, to be adjudged to them, &c.

FITZHUGH, *for Plaintiffs.*"

[*Demurrer to said special replication, to wit:*]

Demurrer to special replication to plea statute limitations.

And the said Andrew, by his attorney, saith that the said plaintiffs, by reason of any thing by them above in replying to the plea of him the said Andrew, of the statute of limitations to the said plaintiffs' action, ought not to have and maintain the said action against him, the said Andrew, because, he says, that the said replication to the said plea, and the matters and things therein contained, are not sufficient in law to avoid the said plea; and to which said replication, and the matters and things therein contained, the said Andrew hath no necessity, nor is he bound by the laws of the land, to answer. Wherefore, and for want of a sufficient replication in this behalf, the said Andrew prays judgment, &c., and that, &c.

DUNCAN.
DODDRIDGE.

[*Demurrer to fourth count, extended to fifth count, also, to wit:*]

"And the said Andrew Donnally, as to the said fourth count in the plaintiffs' declaration, filed by way of amendment thereto, saith that the said plaintiffs their action aforesaid against him upon the said fourth count ought not further to have and maintain, because, he saith, that the said fourth count, and the matters and things therein contained, are not sufficient for them, the said plaintiffs, to have and maintain their said action upon, against the said Andrew, and to which the said Andrew hath no necessity, nor is he bound by the laws of the land to answer. And this he is ready to verify. Wherefore, &c., he prays judgment, &c."

EXHIBITS AND DEPOSITIONS.

[*Copy of Law of Kentucky, to wit:*]

Law of Kentucky.

"An act to amend the law of proceedings in civil cases. Approved, Feb. 4, 1812.

"Sec. 8. *Be it further enacted by the authority aforesaid,* That all writings hereafter executed without a seal or seals, stipulating for the payment of money or property, or for the performance of any act, duty or duties, shall be placed upon the same footing with sealed writings containing the like stipulations, receiving the same consideration in all courts of justice, and to all

intents and purposes having the same force and effect, and upon which the same species of action may be founded as if sealed."

I, Thomas T. Crittenden, Secretary of State for the Commonwealth of Kentucky, do certify that the above is a true extract from the enrolled bill in my office, entitled "An act to amend the law of proceedings in civil cases," approved, Feb. 4th, 1812, and that it is the only section upon the same subjects.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the State, at Frankfort, this 23d day of July, 1830.

[L. S.] T. T. CRITTENDEN, *Secretary.*

[*Transcript of the Record from the District of West Tennessee.*]

Tennessee record.

"Pleas at the court-house in Nashville, in the district of West Tennessee, before the honorable John McNairy, judge of the courts of the United States for the districts of East and West Tennessee, on the 20th day of July, in the year 1826, and of the independence of the United States the fifty-first.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES, Complainants.
vs.
WILLIAM CAMPBELL, Defendant. } *In Chancery.*

Be it remembered, that heretofore, to wit, on the 2d day of May, 1823, the complainants exhibited their bill of complaint in the circuit court of the United States for the district of West Tennessee, against William Campbell, which bill is in these words, that is to say:

UNITED STATES OF AMERICA,
Seventh Circuit, West Tennessee District.

Bill.

The bill of complaint of the President, Directors, and Company of the Bank of the United States, a corporation created by act of Congress, approved 10th April, 1816, against William Campbell, a citizen and resident of the State of Tennessee. Humbly complaining, showeth to your honor, that heretofore, on the 17th day of October, 1821, said defendant, William Campbell, composing one of the mercantile firm of Campbell, Vaught & Co., at that time trading and doing business under that style and by that description, and being indebted to the said president, directors, and company, in the sum of twelve thousand eight hundred and seventy-seven dollars, for the payment of which said Campbell, Vaught & Co. executed their note, bearing date on the said 17th day of October, 1821, payable sixty days after date, at the office of dis-

count and deposite of the Bank of the United States at Louisville, Kentucky, to secure the payment of which sum of money, with the interest accruing thereon, also the costs of recording, and ten dollars charges of preparing the deed of mortgage hereinafter mentioned, said William Campbell made and executed to said President, Directors, and Company of the Bank of the United States, his certain deed or indenture under his hand and seal, a copy of which is hereto annexed, and marked *exhibit A*, as a part of this bill; whereby he conveyed to them a certain lot of ground in the town of Russelville, Kentucky, upon which there is a three story brick house, the boundaries of which will appear by said deed or indenture. Also one other lot in said town of Russelville, whereon there is a large two story brick house and brick kitchen, the boundaries of which will appear by said deed. Also one other lot in the said town of Russelville, whereon there is a large brick stable, the boundaries of which will appear by said deed, together with all and singular the appurtenances to the said lots belonging, or in anywise appertaining. To have and to hold the said bargained premises, &c. unto the said President, Directors, and Company, and their successors and assigns for ever, against the claims of all persons whatever. To which there was a proviso or condition annexed, that whereas Campbell, Vaught & Co., stand indebted to the said plaintiffs in the sum of $12,877, for which they hold the note of said Campbell, Vaught & Co., dated 17th day of October, 1821, payable sixty days after date at the office of discount and deposite of the Bank of the United States at Louisville, Kentucky, which note is to be renewed, with securities, from time to time, as long as the said plaintiffs will permit, and at the time of each renewal the discounts and interest to be paid. And also such calls as the plaintiffs shall think proper to make of the said debt, or any part thereof. And if the said Campbell, Vaught & Co. should, at all times when required, renew said note, with security, and pay at the time of such renewal the interest and discount thereon in advance, and also pay such calls as may be made from time to time on said note, and finally pay and satisfy the whole of said note, and shall also pay and satify costs of recording this mortgage, and ten dollars the charge of drawing the same, then said conveyance, and every part thereof, to be void. And also that said defendant was to retain possession of said premises, and pay the taxes thereon, until default in complying with said undertaking. And the said plaintiffs say that said debt of $12,877, so due by said note as recited in said deed, and to secure the payment of which said mortgage was executed, is yet unpaid; that the same was renewed from time to time until the 26th day of June, 1822, when the same parties executed their note, payable sixty days after date, to said plaintiffs, negotiable and payable at the office of discount and deposite of said bank at Louisville, Kentucky, for value received; that Campbell, Vaught & Co. were required to pay said sum of money at maturity of said note, which they have failed to do; that said Campbell failed to pay the costs and charges of registering said deed, and said sum of ten dollars

charges of drawing the same, although to do the same they were often required. Your orators had hoped that said Campbell would have submitted that said lots and mortgaged premises should be given up to them, and that he would have released his equity of redemption in the same, or that he would have submitted that the same should be sold, and the proceeds thereof be applied to extinguish said debt, and to that end have applied to him in a friendly way, but he has altogether and wholly refused to do so; in tender consideration whereof, and forasmuch as your orators are remediless, except in this honorable court, they pray your honor that said defendant may be compelled to make full, true, and perfect answer *make*, to all and singular the matters herein stated; and that, by a decree of this honorable court, said mortgaged premises may be directed to be sold for cash, and that the proceeds thereof be applied to the payment of said debt and interest, and that the equity of redemption of said defendant be for ever closed; and that said defendant may be directed, by a decree of this honorable court, to convey to such purchaser and release his equity of redemption, and that your orators may have such other and further relief as is suited to the equity of their case, and they will ever pray, &c.

GRUNDY & TRIMBLE, *Solicitors.*

Exhibit A.

This indenture, made this thirteenth day of October, 1821, between William Campbell, of the county of Davidson, and State of Tennessee, of the first part, and the President, Directors, and Company of the Bank of the United States, of the second part, witnesseth: that the said Campbell, for and in consideration of the sum of one dollar current money of the United States to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, enfeoff, convey, and confirm, unto the said party of the second part, and their successors and assigns, one certain lot of ground in the town of Russelville, State of Kentucky, upon which there is a three story brick house, and bounded as follows: beginning at the northeast corner of a part of lot No. [12,] twelve, sold by William W. Whitaker to John Roberts, and adjoining the public square of said town, running thence with said public square north 66°, east twenty-four feet, thence south 24°, east forty feet, thence south 66°, west two feet, thence south 24°, east fifteen feet, thence north 66°, east twelve feet, thence south 24°, east twenty feet, thence south 66°, west thirty-four feet, thence north 24°, west seventy-five feet, to the beginning. Also one other lot in the said town of Russelville, whereon there is a large two story brick house and brick kitchen, and bounded as follows: beginning on the northeast corner of the public square, and being part of lot No. [18,] eighteen; thence with the public

square north 24°, west forty-four feet, to a lot reserved by G. W. and W. H. Whitaker; thence south 66°, west eighty-eight feet, to Thomas Patton's lot; thence with said Patton's lot, south 24°, east twenty-two feet, to where it joins a lot sold by Hannum to Patton; thence north 66°, east forty feet, thence south 24°, east to where it joins Main Cross street; thence north 66°, east forty-eight feet, to the beginning. Also one other lot in the said town of Russelville, whereon there is a large brick stable, and bounded as follows: beginning at Amos Edwards's fence on the public square, running thence south twenty-four [24°,] east forty feet six inches, thence at right angles south 66°, west eighty-six feet, thence north 24°, west six feet three inches, thence south 66°, west sixty feet, thence north 24°, west to Amos Edwards's line thirty four feet three inches, thence with Edwards's line to the beginning—with all and singular the appurtenances thereunto belonging, or in anywise appertaining. To have and to hold the premises hereby bargained and sold, with the appurtenances, unto the said party of the second part, and their successors and assigns for ever. And the said Campbell does hereby covenant and agree that the premises hereby bargained and sold, now and for ever hereafter shall be and remain free and clear of and from all right and title of dower, or other incumbrance whatever. And that the said Campbell will, and his heirs and administrators and executors shall, warrant and forever defend said premises to said party of the second part, and their successors and assigns forever, against the claim or claims of all and every person or persons whatever. Provided, however, and these presents are upon this condition, that whereas Campbell, Vaught & Co. stand indebted to the party of the second part in the sum of twelve thousand eight hundred and seventy-seven dollars, for which the party hold the note of the said Campbell, Vaught & Co., with David Campbell, and Steele, Donnally & Steeles securities, dated the 17th day of October, 1821, payable sixty days after date at the office of discount and deposite of the Bank of the United States at Louisville, Kentucky, which note is to be renewed, with the securities aforesaid, from time to time, as long as the party of the second part will permit, and at the time of each and every renewal the discount or interest to be paid, and also all such call or calls as the party of the second part shall think proper to make of the said debt, or any part thereof. Now, if the said Campbell, Vaught & Co. shall at all times, when required, renew said note, with the security aforesaid, and pay, at the time of such renewal, the interest or discount thereon in advance, and also pay such call or calls as the party of the second part shall from time to time make upon the said note, and finally shall pay off and satisfy the whole of said note, and shall also pay the costs of recording this mortgage, and ten dollars charges for drawing the same, then, and in that case, the premises hereby bargained and sold shall revert to, and vest in the said Campbell and his heirs, in as ample a manner as if this conveyance had never been executed. And it is understood and agreed that the execution of this mortgage is in nowise to operate as a re-

lease or discharge of the secureties in the note aforesaid, or in anywise to prevent the recovery of said debt in said note specified, of the drawers thereof, in any action at law. And the said Campbell is to retain possession of the mortgaged premises, and to enjoy the rents and profits thereof, and pay the taxes and public dues thereon, until default shall be made by the said Campbell, Vaught & Co. in the duties and undertakings aforesaid, or some one of them.

In testimony whereof, the said Campbell hereto sets his hand and seal, this day first written.

(Signed) WM. CAMPBELL. [SEAL.]

Signed, sealed, and delivered in presence of

Logan county.

I, Spencer Curd, clerk of the county court of Logan county aforesaid, do hereby certify that the within deed of mortgage from William Campbell to the President, Directors, and Company of the Bank of the United States, was this day acknowledged before me, in my office, by said Campbell, to be his act and deed.

In testimony whereof, and that the same, together with this certificate, stands truly recorded in my office, I have hereunto set my hand, this 8th day of Feb. 1822.

SPENCER CURD.

Whereupon, process of subpœna to answer issued, tested, the first Thursday after the fourth Monday in November, 1823. Upon which subpœna is the following endorsement, to wit:

"NASHVILLE, *May 5th*, 1823.

"I acknowledge legal service of this subpœna and copy of bill."

(Signed) "W. CAMPBELL."

And at rules holden in the clerk's office for the month of December, 1823, the defendant having failed to answer the complainants' bill, agreeably to the rules of this court, the same is taken for confessed against him, and set for hearing ex parte at next court.

Final decree.

And at the June term, 1824, said cause was continued. And now, to wit, at June term, 1825, a decree is entered in said cause, which is in the words following, that is to say: Be it remembered that the above cause came on to be heard on this fifth day of July, 1825, before the honorable John McNairy, judge, &c., upon the bill and exhibit filed [the said bill of complaint having been regularly taken for confessed against the said defendant, and set for hearing,] whereby it appeared to the court that, on the 17th day of October, 1821, the defendant was indebted to the complainants in the sum of $12,877, payable in the Bank of the United States at Louisville, Kentucky, and executed to them his mortgage deed of that date to secure the payment of the same, which is exhibited in this cause, and by which the defendant conveyed to them the following property: A lot of ground in Russelville, Kentucky,

upon which there is a three story brick house, and bounded as follows: beginning at the northeast corner of a part of lot No. 12, sold by William W. Whitaker to John Roberts, and adjoining the public square of said town, running thence with said public square north 66 east 24 feet, south 24 east 40 feet, south 66° west 2 feet, south 24° east 15 feet, north 66° east 12 feet, south 24° east 20 feet, south 66° west 34 feet, north 24° west 75 feet, to the beginning. One other lot in said town of Russelville, whereon there is a large two story brick house and brick kitchen, bounded as follows: beginning at the northeast corner of the public square, being part of lot No. 18, thence with the public square, north 24° west, 44 feet, to a lot reserved by the said G. W. and W. H. Whitaker, thence south 66° west 88 feet to Thomas Patton's lot, thence with said Patton's lot south 24° east 22 feet, to where it joins a lot sold by Hannum and Patton, thence north 66° east 40 feet, thence south 24° east to where it joins Main Cross street, thence north 66° east 48 feet, to the beginning. Also one other lot in said town of Russelville, whereon there is a large brick stable, and bounded as follows: beginning at Amos Edwards's fence on the public square, running thence south 24° east 40 feet 6 inches, thence at right angles south 66° west 86 feet, thence north 24° west 6 feet 3 inches, south 66° west 60 feet, north 24° west Amos Edwards's line 34 feet 3 inches, thence with Edwards's line to the beginning, with the appurtenances. To have and to hold to the said President, Directors, and Company, their successors and assigns for ever, clear of dower or other incumbrance, and with covenant of general warranty. In which said mortgage deed it is recited that the said William Campbell, in the name of Campbell, Vaught & Co., had executed a note to the complainants for the aforesaid sum of money, payable in the said bank at Louisville, and had given certain securities or endorsers upon the same, payable at 60 days, which note might be renewed at the discretion of complainants, upon payment of the discount or interest, and such calls as the complainants might, from time to time, make on said note; and if the defendant should finally pay and satisfy the whole of said debt, and also pay the costs of recording said mortgage, and ten dollars for drawing the same, in that case the above described premises should revert to the said Campbell, his heirs, &c. And complainants charge that said note was renewed, from time to time, until the 26th day of June, 1822, when the same was again renewed at sixty days for the aforesaid sum of $12,877, payable in the said bank; that the said defendant (and others,) when said note fell due, were called upon to pay the same, but wholly failed so to do, or to pay $10 for drawing said mortgage, and pay the charges for registering the same. It is therefore ordered, adjudged, and decreed, by the court, that the above described property be sold to satisfy the aforesaid sum of $12,877, with interest up to this time, to wit, $2,190, together with the interest which may hereafter accrue, the costs and charges aforesaid, and also the costs of this suit, unless the defendant shall pay and satisfy the same on or cefore the first day of January next.

And it is further ordered that Priestly Edwards and John Breathett, or either of them, be appointed commissioners to sell the same, and that they proceed to make such sale in the town of Russelville, and State of Kentucky, within eight months from this time, first giving forty days' notice of such sale in some two newspapers printed in different towns in Kentucky, the premises to be sold on a credit of six and twelve months in equal sums, the purchaser giving good and sufficient security for the purchase money in current money of the United States. And it is further ordered that if part of the premises described in said mortgage deed be sufficient for the payment of the aforesaid debt, with interest, costs, and charges, first paying the costs of this suit, which shall be paid at the time of sale, in that event the said commissioners shall desist from selling the balance. And it is further ordered, that if the whole of said premises are sold, or if there remains a balance upon the sale of such as may be sold, over and above the amount of said sums of money, together with the costs of this suit, in that event the same shall be payable to the said defendant William Campbell, who is hereby foreclosed and perpetually enjoined from redeeming said mortgaged premises, or such part thereof as may be sold as aforesaid. And it is further ordered, adjudged, and decreed, by the court, that the defendant, William Campbell, execute deeds of conveyance in fee simple to the purchasers of the said mortgaged premises, or to such parts thereof as may be sold as aforesaid. And that the commissioners report to the June term, 1826, of this court, on the first day of said term. And it is further ordered, adjudged, and decreed, that, should the mortgaged premises not sell for a sum sufficient to pay the sums required by this decree, that then the complainants be entitled to sue out an execution, as at law, for any sum which may remain due, and complainants may direct the said premises to be sold at a further day than is above specified, and upon any more extended credits that the complainants may choose to direct.

Final decree. Report of commissioners.

And now, to wit, at the day first above mentioned, the commissioners appointed by the decree made in this cause at the last term, made and returned their report; which follows, in these words:

In pursuance of a decree of the honorable the United States circuit court for West Tennessee, in the case of the President, Directors, and Company of the Bank of the United States, against William Campbell, rendered at their June term, 1825, I, John Breathitt, one of the commissioners named therein, having caused advertisements to be made in the Reporter at Lexington, and the Commentator, at Frankfort, Kentucky, forty days, and having advertised the same in the Weekly Messenger at Russelville, Kentucky, did, on the 22d day of February, 1826, according to said advertisement, expose to sale to the highest bidder on the premises in Russelville, Kentucky, a lot of ground in Russelville, upon which there is a three story brick house, and bounded as follows: beginning at the northeast corner of a part of lot No. 12, sold by William Whitaker to John Roberts, and adjoining the

public square of said town, running as is described in said decree, upon a credit of six and twelve months, when the complainants, by Matthew T. Scott, their agent, became the purchaser, being the highest bidder, at the sum of eight hundred and seventy-five dollars.

I then proceeded to the premises secondly described in said decree, on which the two story brick house stands, kitchen, &c., and in like manner, and upon like conditions, exposed the premises as described in the mortgage, when Augustine Byrne, being the highest bidder, became the purchaser, at the sum of thirteen hundred and twenty-six dollars, from whom I took bonds, with William L. Sands his security, for six hundred sixty-three dollars, each payable in six and twelve months. I then proceeded to the premises thirdly and lastly described in said decree, on the same day and year aforesaid, upon which the brick stable stands, and in like manner, and upon the like terms, exposed said lot and premises to sale to the highest bidder, when Adam Woods became the purchaser at two hundred and five dollars, who executed his notes, ($102 50 each,) payable at six and twelve months, to the complainants, with William Norton security, which four notes are delivered to the agent of the complainants. A copy of the advertisement is exhibited. All which is respectfully submitted to the court.

(Signed) JOHN BREATHETT, *Commissioner.*
February 22d, 1826.

Whereupon it is considered by the court that the defendant, William Campbell, do, within six months from this day, execute a good and sufficient deed or deeds to the purchaser or purchasers of the lots and premises sold as above stated. Confirmation of report, &c.

[*Copy of the Advertisements above referred to.*]

Commissioners' sale of town lots in Russelville, Kentucky. In pursuance of a decree of the circuit court of the United States for the district of West Tennessee, pronounced on the fifth day of July, 1825, in a suit in chancery, wherein the President, Directors, and Company of the Bank of the United States, are complainants, and William Campbell is defendant, the subscribers [or one of them,] appointed by the said court commissioners to carry said decree into effect, will proceed, on the 22d day of February, 1826, in the town of Russelville, Kentucky, to sell the several lots and premises in the said decree mentioned [or so much thereof as may be necessary to satisfy the debt, interest, and costs, referred to in said decree] at public auction to the highest bidder, for current money of the United States, upon a credit of six and twelve months, in equal sums. The sale will take place upon the premises in said town of Russelville, between the hours of 11 and 3 o'clock on the day aforesaid, and the purchaser or purchasers will be required to give good and sufficient security for the purchase money, payable in the aforesaid currency. The property Advertisement of sale.

thus to be sold is the same which was mortgaged by the defendant William Campbell to the said the President, Directors, and Company of the Bank of the United States, by deed dated the 17th day of October, 1821, to wit: a lot of ground in Russelville, Kentucky, upon which there is a three story brick house, and bounded as follows: beginning at the northeast corner of a part of lot No. 12, sold by William Whitaker to John Roberts, and adjoining the public square of said town, running thence with said public square north 66° east 24 feet, south 24° east 40 feet, south 66° west 2 feet, south 24° east 15 feet, north 66° east 12 feet, south 24° east 20 feet, south 66° west 34 feet, north 24° west 75 feet, to the beginning. One other lot in said town of Russelville, whereon there is a large two story brick house and brick kitchen, bounded as follows: beginning at the northeast corner of the public square, being part of lot No. 18, thence with the public square north 24° west 44 feet, to a lot reserved by G. W. and W. H. Whitaker, thence south 66° west 88 feet to Thomas Patton's lot, thence with said Patton's lot, south 22° east 22 feet, to where it joins a lot sold by Hannum and Patton, thence north 66° east 40 feet, thence south 24°, east, to where it joins Main Cross street, thence north 66° east 48 feet, to the beginning. Also one other lot in said town of Russelville, whereon there is a large brick stable, and bounded as follows: beginning at Amos Edwards's fence on the public square, running thence south 24° east 40 feet 6 inches, thence at right angles south 66° west 86 feet, thence north 24° west 6 feet 3 inches, south 66° west 60 feet, north 24° west Amos Edwards's line 34 feet 3 inches, thence with Edwards's line to the beginning.

PRESTLEY EDWARDS, } *Comm'rs.*
JOHN BREATHETT, }

January 9th, 1826.

LEXINGTON, KY., *March* 6, 1826.

I certify that the annexed advertisement of a sale of lots in Russelville, Ky., has been regularly published in the Kentucky Reporter from the 9th of January to the day of sale. Given under my hand, the day and date above.

THO. SMITH.

Rec'd of M. T. Scott, esq. ten dollars for publishing the annexed advertisement in the Reporter seven times.
$10.

THO. SMITH.

Commissioners' sale of town lots in Russelville, Kentucky.—In pursuance of a decree of the circuit court of the United States for the district of West Tennessee, pronounced on the 5th day of July, 1825, in a suit in chancery wherein the President, Directors, and Company of the Bank of the United States, are complainants, and William Campbell is defendant, the subscribers [or one of them,] appointed by the said court commissioners to carry said

decree into effect, will proceed, on the 22d day of February, 1826, in the town of Russelville, Kentucky, to sell the several lots and premises in the said decree mentioned [or so much thereof as may be necessary to satisfy the debt, interest, and costs, referred to in said decree] at public auction to the highest bidder, for current money of the United States, upon a credit of six and twelve months, in equal sums. The sale will take place upon the premises in said town of Russelville, between the hours of eleven and three o'clock on the day aforesaid, and the purchaser or purchasers will be required to give good and sufficient security for the purchase money, payable in the aforesaid currency. The property thus to be sold is the same which was mortgaged by the defendant William Campbell to the said President, Directors, and Company of the Bank of the United States, by deed dated the 17th day of October, 1821, viz. a lot of ground in Russelville, Kentucky, upon which there is a three story brick house, and bounded as follows: beginning at the northeast corner of a part of lot No. 12, sold by William Whitaker to John Roberts, and adjoining the public square of said town, running thence to the said public square north 66° east 2 feet, south 24° east 40 feet, south 66° west 2 feet, south 24° east 15 feet, north 66° east 12 feet, south 24° east 20 feet, south 66° west 34 feet, north 24° west 75 feet, to the beginning. One other lot in said town of Russelville, whereon there is a large two story brick house and brick kitchen, bounded as follows: beginning at the northeast corner of the public square, being part of lot No. 18, thence with the public square north 24° west 44 feet, to a lot reserved by G. W. and W. H. Whitaker, thence south 66° west 88 feet, to Thomas Patton's lot, south 24° east 22 feet to where it joins a lot sold by Hannum & Patton, thence north 66° east 40 feet, thence south 24° east to where it joins Main Cross street, thence north 66° east 48 feet, to the beginning. Also one other lot in said town of Russelville, whereon there is a large brick stable, and bounded as follows, to wit: beginning at Amos Edwards's fence on the public square, running thence south 24° east 40 feet 6 inches, thence at right angles south 66° west 86 feet, thence north 24° west 6 feet 3 inches, south 66° west 60 feet, north 24° west Amos Edwards's line 34 feet 3 inches, thence with Edwards's line, to the beginning.

(Signed) PRESTLY EDWARDS, } *Comm'rs.*
JOHN BREATHETT, }

January 4th, 1826.

The undersigned, editor of the Commentator, an authorized newspaper [by act of Jan. 17th, 1817] published at Frankfort, in the State of Kentucky, doth hereby certify that a certain advertisement of a commissioners' sale of town lots in Russelville, Kentucky, was published in the said Commentator of the seventh of January, 1826, and in each succeeding paper regularly until the 18th of February following, inclusive: and that the printed paper hereto annexed is a copy of the said advertisement, as the same was published as aforesaid.

J. G. DANA.

M. T. SCOTT, esq. To J. G. DANA & J. H. HOLEMAN, Dr.
February 18th, 1826.

To publishing an advertisement of commissioners' sale of town lots in Russelville—6 squares, 7 insertions. $12 specie.

Received payment, March 8th, 1826.
J. G. DANA & J. H. HOLEMAN.

UNITED STATES OF AMERICA,
District of West Tennessee, } ss.

Certificate of clerk. I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the foregoing to be a true and perfect transcript of the record and proceedings in the above suit in chancery, wherein the President, Directors, and Company of the Bank of the United States are complainants, and William Campbell defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in Nashville, [L. S.] this 26th day of July, in the year 1830, and of the independence of the United States the fifty-fifth.

N. A. McNAIRY, *Clerk.*

UNITED STATES OF AMERICA,
District of West Tennessee, } ss.

Certificate of judge. I, John McNairy, judge of the courts of the United States for the districts of East and West Tennessee, do hereby certify that Nathaniel A. McNairy, whose signature appears to the foregoing certificate, is, and was at the time of signing the same, clerk of the courts of the United States for the district of West Tennessee; that his attestation is in due form of law, and that full faith and credit is due to his official acts as such. Given under my hand and seal at Nashville, this 26th July, 1830.

JOHN McNAIRY. [SEAL.]

[*Deposition of L. Welch.*]

VIRGINIA, *Kanawha county, to wit:*

ANDREW DONNALLY, Defendant, *Adst.*
BANK OF THE UNITED STATES, Plaintiff. } *In the federal court for the western district of Virginia.*

Deposition of Levi Welch. Be it remembered, that, on the twenty-ninth day of March, 1830, I have caused to come before me, at the office of Joseph L. Fry, in the town of Charleston, Kenawha county, Levi Welch, aged above twenty-one years, witness for the defendant, and at his instance, in a certain suit depending in the federal court for the western district of Virginia, holden at Clarksburg, wherein the Bank of the United States is plaintiff, and Andrew Donnally is defendant. The said witness being first duly sworn and cautioned by me to speak the truth, the whole truth, and nothing but the

truth, as well in behalf of the said plaintiff as the said defendant, deposeth and says—

Question by defendant. When did Steele, Donnally & Steeles, begin their partnership, what was its object, and when did it terminate?

Answer. The said partnership or speculation of Steele, Donnally & Steeles, began in February or March, 1817, and by agreement was to terminate on the 1st of January, 1818. The object of said copartnership was the purchase of all the salt, or nearly all the salt, manufactured on the Kanawha for that season, up to the 1st January, 1818. In the beginning year 1818, the said firm renewed their contract with the manufacturers for the purchase of the salt to be manufactured for that year. And that the said speculation or partnership ended with that year, and was not again renewed. The object of said partnership or speculation was confined solely to the purchase of the salt manufactured on the Kanawha for the years 1817 and 1818. And that this deponent was their principal clerk during the partnership aforesaid for both years.

Question second by defendant. How was their salt generally disposed of? And what did you do in relation to the winding up of their business?

Answer. The salt generally was shipped by said firm to the market on the Ohio and elsewhere, to be disposed of by agents and commission merchants. And in the spring and summer of 1819, after an effort had been made by said firm to renew their contract with the manufacturers of salt had failed, this deponent attended to the settlement of the business of said firm with their commission merchants and agents abroad, as well as to dispose of the remains of salt in the hands of said agents. The said accounts and sales were generally closed by said deponent, with some exceptions as to the sales of salt.

Question third by defendant. Do you know of any written articles of partnership of Steeles, Donnally & Steeles?

Answer. I did not know of any written articles of agreement between said parties until after the year 1818, when I first saw the paper [marked A. James C. McFarland,] which paper is in the handwriting of William Steele, with the exception of the signature of Andrew Donnally. And this deponent knows of no other article of partnership between said parties.

Question fourth by defendant. Where has Adam and Richard Steele and defendant Donnally always resided?

Answer. So far as this deponent knows, the said Adam Steele resided at Shelbyville, and Richard Steele at Louisville, Kentucky, since the year 1816. The said Andrew Donnally has resided for the last thirty years in Kanawha county, Virginia. And further this deponent saith not.

L. WELCH.

VIRGINIA, *Kanawha county, to wit:*

I, James C. McFarland, a justice of the peace for Kanawha county, do certify that the foregoing deposition of Levi Welch

was taken, sworn to, and subscribed, before me at the time and place in the caption hereof mentioned; and that I am not of counsel or attorney, or in anywise related to either plaintiff or defendant in said cause, nor am I interested in the event of said cause: that the before mentioned deposition was wholly written by me; that the place of taking said deposition is more than one hundred miles from Clarksburg, and therefore the same is taken without a commission, and the same is taken in the absence of plaintiff, and without any notice being served on said plaintiff, their agent, or attorney; because said plaintiff, nor any agent or attorney of said plaintiff, is not, nor does not reside within one hundred miles of the place of taking said deposition. Said deposition is, immediately after taking the same, certified, sealed up, and directed to the said court, without any alteration.

Given under my hand and seal at Charleston, Kanawha county, Virginia, this 29th day of March, 1830.

J. C. McFARLAND, *J. P.* [SEAL.]

Copartnership agreement.

[*Copy of Copartnership Agreement of Steele, Donnally & Steeles, marked "A. James C. McFarland," and referred to in the above Deposition, being part thereof.*]

"Memo. of agreement entered into on the 12th day of March, eighteen hundred and seventeen, between Andrew Donnally, jr. of the one part, and Adam Steele, Richard Steele, Wm. Steele, and Robert M. Steele, trading under the firm and style of W. Steele & Co., of the other part, witnesseth. The said Donnally and Steeles having entered into articles of agreement with the manufacturers of salt at the Kanawha salt works, for all or nearly all the salt to be manufactured from the 1st day of March, 1817, until the 1st day of January, 1818,—now it is understood that the said Donnally takes an interest in said purchase or copartnership equal to one-third part thereof; the said Steele & Co. to take the other two-thirds in said copartnership or purchase. The business of said copartnership to be done under the firm of Steele, Donnally & Steeles. Witness our hands and seals the day and date before written.

A. DONNALLY. [SEAL.]
A. STEELE. By W. Steele. } [SEAL.]
RICHARD STEELE. By W. Steele. } [SEAL.]
W. STEELE. [SEAL.]
ROBT. STEELE. By W. Steele." } [SEAL.]

Deposition of William Eastham.

[*Depositions of Wm. Eastham, Jas. Guthrie, and Geo. C. Gwathmey.*]

"Depositions taken before me, Samuel Dickinson, the undersigned, one of the justices of the peace in and for the Commonwealth of Kentucky, and county of Jefferson, being, by virtue of

my commission, one of the judges of the county court in and for said county, duly commissioned and acting as such, taken on this 26th July, 1830, at Louisville, in the county aforesaid, to be read as evidence in a suit pending in the circuit court of the United States in and for the western district of Virginia, wherein the President, Directors, and Company of the Bank of the United States, are plaintiffs, and Andrew Donnally is defendant.

The deponent, William Eastham, being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he does not reside in the State of Virginia, nor within one hundred miles of it; that he has now no fixed place of residence; his last residence was at Nashville, Tennessee, and is above twenty-one years of age. He further saith that, for about three years, from 1823 to 1826, he was in the employment of the defendant, Andrew Donnally, as agent transacting his business. During that time he had and heard frequent conversations with said Donnally relative to a partnership subsisting formerly between said Donnally and the Messrs. Steeles; that, from said conversations, he learned that said Donnally had been in partnership, doing business with the Messrs. Steeles, under the firm and style of Steele, Donnally & Steeles; that he has always been under the belief that Adam Steele, Richard Steele, William Steele, and Robert M. Steele, were the other members of that firm, but he cannot say, positively, that his knowledge of their being so was derived from said defendant Donnally. And further saith not.

WILLIAM EASTHAM.

Deposition of James Guthrie.

The deponent, James Guthrie, being first sworn and cautioned to depose the whole truth, doth depose and say—that he resides in Louisville, Ky., and is over twenty-one years of age; that he has seen Andrew Donnally, and heard him speak on the subject of partnership in the salt business, under the firm of Steele, Donnally & Steeles, and understood from him he was one of the partners of that firm. And further saith not.

JAS. GUTHRIE.

Deposition of Geo C. Gwathmey.

The deposition of George C. Gwathmey, being first sworn and cautioned to depose the whole truth, doth depose and say—that he resides at Louisville, Kentucky, and is over the age of twenty-one. And further deposeth and says that he was a teller in the office of discount and deposite of the Bank of the United States at Louisville in the years 1818, 1819, and 1820, and has so continued ever since; that on the 12th day of December, 1818, Steele, Donnally & Steeles, sold to the said office a bill of exchange for $15,500, drawn by Campbell, Vaught & Co. on William Campbell at New Orleans, payable to Steele, Donnally & Steeles, and by them endorsed; that said bill was returned protested for non-payment; that a note for $17,844 $\frac{33}{100}$, the amount of the principal, interest and damages of said bill, signed by Campbell, Vaught & Co., David Campbell, and Steele, Donnally & Steeles, dated September 26th, 1819, was discounted, and the proceeds thereof applied to

the discharge of said bill of $15,500; that said note was renewed and reduced from time to time, until the giving the note for $12,877, signed by said parties, and hereto attached; since which time the same has not been renewed or paid, as far as the deponent knows or believes, except as shown by the credits endorsed on it. Deponent further states that he is well acquainted with the handwriting of William Steele, one of the late firm of Steele, Donnally & Steeles, and that the signature of said firm to said note hereto attached, is in the handwriting of Richard Steele, as he believes; that Steele, Donnally & Steeles had an account open and running on the books of said office of discount and deposite from April, 1818, to September, 1821. And further saith not.

GEO. C. GWATHMEY.

"I, Samuel Dickinson, one of the justices of the peace in and for the county of Jefferson, in the State of Kentucky, duly commissioned, sworn, and acting as such, and by virtue of my said commission being one of the judges of the county court in and for said county, do certify that, at the request of the plaintiff in said suit, I caused the deponents in the foregoing depositions to come before me at the time and place stated in the caption; because the said witnesses reside more than one hundred miles from the State of Virginia, the place of holding the said court of the United States. That I did not cause any notification to be given to the adverse party of the time and place, so as to be present at taking the same, because the said adverse party did not reside within one hundred miles of the place of taking the same, and had no agent or attorney known within that distance of the said place of caption. The said witnesses were by me carefully examined, cautioned, and sworn, then and there to testify the whole truth. The said deposition of William Eastham was wholly reduced to writing by me in presence of said witnesses, and the depositions of James Guthrie and George C. Gwathmey were wholly reduced to writing by themselves then and there, and subscribed by each of them in my presence. That I am not of counsel or attorney to either of the parties, or interested in the event of the cause. All which I do certify to said court as the cause and manner wherefore the said depositions were taken.

SAMUEL DICKINSON, *J. P.*"

[*Depositions of Jno. T. Gray and Peter Bier.*]

Original note attached to depositions of Gray and Bier.

$12,877. *June* 26, 1822.

Sixty days after date, we, Campbell, Vaught & Co. as principals, and David Campbell and Steele, Donnally & Steeles, as sureties, do promise to pay, jointly and severally, to the order of the President, Directors, and Co. of the Bank of the United States, without defalcation, twelve thousand eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposite of said bank at Louisville, Ky., value received, with in-

terest thereon at the rate of six per centum per annum thereafter, if not paid at maturity.

CAMPBELL, VAUGHT & Co.
DAVID CAMPBELL.
STEELE, DONNALLY & STEELES.

[*Endorsed.*] 1826, Sept. 28, Cr. the within note by cash, 102 50
Feb. 22, 2,303 50

$2,406

The deposition of John T. Gray, before me, William Thompkins, one of the justices of the peace in and for the Commonwealth of Kentucky, and county of Jefferson, being, by virtue of my said offices, one of the judges of the county court of Jefferson county, which is a court of record, duly commissioned, sworn, and acting as such, taken on this 20th day of July, 1831, at Louisville, in the county aforesaid, to be read as evidence in a certain suit depending in the court of the United States in and for the western district of the State of Virginia, to be holden at Clarksburg, wherein the President, Directors, and Company of the Bank of the United States are plaintiffs, and Andrew Donnally is defendant. The said deponent being first duly sworn and cautioned to to depose the whole truth, doth depose and say—that he resides in said city of Louisville, and more than one hundred miles from Clarksburg aforesaid, the place of trial of said suit. Furthermore, he saith that he is over twenty-one years of age; that he is acquainted with Richard Steele, and is familiar with his handwriting, having frequently seen him write; that the note presented to him, and hereto attached, for $12,877, dated June 26th, 1822, signed by Campbell, Vaught & Co., David Campbell, and Steele, Donnally & Steeles; says that the signature of Steele, Donnally & Steeles, is in the handwriting of the said Richard Steele. And further saith not. Deposition of John T. Gray.

JOHN T. GRAY.

Also, the deposition of Peter Bier, of lawful age, taken at the time and place, in the manner and for the purpose aforesaid. The deponent says that he is over the age of twenty-one years; that he resides at Louisville, Ky., more than one hundred miles from Clarksburg, Va., the place of trial of said suit. Furthermore, he saith that he has been long acquainted with Richard Steele of said Louisville, and lived with him a number years as clerk; is acquainted with his hand writing, having frequently seen him write. He has examined the note referred to in the preceding deposition, and hereto attached, and states that the signature of Steele, Donnally & Steeles, attached thereto, is in the handwriting of said Richard Steele. And further saith not. Deposition of Peter Bier.

PETER BIER.

I, William Thompkins, one of the justices of the peace in and for the county of Jefferson, in the State of Kentucky, duly commissioned, sworn, and acting as such, and, by virtue of my said Depositions of Gray and Bier, &c.

commission, one of the judges of the county court of said county, which is a court of record, do certify that, at the request of the plaintiffs in said suit, I caused the deponents in the foregoing depositions to come before me at the time and place stated in the caption, because the said witnesses reside more than one hundred miles from Clarksburg, the place of holding the said court of the United States. That I did not cause any notification to be given to the adverse party of the time and place, so as to be present at taking the same, because the said adverse party did not reside within one hundred miles of the place of caption, and had no agent or attorney known within that distance of said place of caption. The said witnesses were by me carefully examined, cautioned, and sworn, to depose the whole truth. The said depositions were wholly reduced to writing by me in presence of said witnesses, then and there, and by them subscribed in my presence. That I am not of counsel or attorney for either party, or interested in the event of the cause. All which I do certify to said court as the cause and manner of taking said depositions. Witness my hand and seal, this 20th July, 1831.

W. TOMPKINS, *J. P.*"

Justice's fee $1. Paid by plaintiffs.

[*Depositions of Samuel Perry and Oliver M. Spencer.*]

"THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES,
vs.
ANDREW DONNALLY, OF THE FIRM OF STEELE, DONNALLY & STEELES.

In the district court of the United States for the western district of Virginia, holden at Clarksburg.

Deposition of Samuel Perry.

Samuel Perry, a witness produced and sworn on the part of the plaintiffs, deposes and says, that he was acquainted with the late firm of Steele, Donnally & Steeles. That said firm was composed of Andrew Donnally, Adam Steele, Richard Steele, William Steele, and Robert M. Steele. Said firm transacted business in the year eighteen hundred and seventeen, and before and afterwards. But when they commenced, or how long they continued, deponent does not recollect. Deponent has heard Richard Steele, of Louisville, say he was a member of that firm, and deponent thinks he has heard Andrew Donnally say that he also was a member of that firm. And further deponent says not.

SAMUEL PERRY.

Deposition of Oliver M. Spencer.

Oliver M. Spencer, a witness produced and sworn on the part of the plaintiff, deposes and says, that he was President of the Miami Exporting Company some time previous to the year eighteen hundred and seventeen, and has so continued ever since. That Steele, Donnally & Steeles, a firm composed, as this deponent understood and believes, of Adam Steele, Andrew Donnally,

Richard Steele, William Steele, and Robert M. Steele, transacted business with said Miami Exporting Company from 17th July, 1817, to the 25th May, 1820, and afterwards. That he, said deponent, has heard William Steele, one of said firm of Steele, Donnally & Steeles, say that said firm was composed of said Donnally and the said Steeles. And this deponent, in January, 1824, heard Andrew Donnally say that he, the said Donnally, was one of the members of said firm; and that the said Steeles above named were also members of said firm. And further this deponent saith not.

O. M. SPENCER.

THE STATE OF OHIO, *city of Cincinnati*, set.

I, Elisha Hotchkiss, mayor of the city of Cincinnati aforesaid, not being attorney nor of counsel for *the* either of the parties in the foregoing suit, nor in any way interested in the event of the same, do hereby certify that the foregoing depositions of Samuel Perry and Oliver M. Spencer were taken before me, at the mayor's office in said city, on the nineteenth day of July, eighteen hundred and thirty-two, at the instance of the plaintiffs, to be read in evidence on the trial of the above cause; that the said depositions were then and there reduced to writing by the said deponents, respectively, in my presence, and so also subscribed by them in my presence then and there; that the said deponents are of lawful age, and have been for many years in business in this city, and that they were by me carefully examined, and cautioned, and sworn, to testify the whole truth relating to the matter in controversy in said suit; that I did not cause any notification to be issued to the adverse party of the taking of said depositions, for the reason that neither the said party nor his agent or attorney resided within one hundred miles of the place of taking the same, and that the reason of taking said depositions is, that the deponents reside at Cincinnati, in the State of Ohio, more than one hundred miles from Kenhawa county, in the State of Virginia, the place of trial. In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city of Cincinnati, this nineteenth day of July, eighteen hundred and thirty-two.

Mayor's fee 50 cents. Paid by Isaac G. Barrett for plaintiffs.

[L. S.] E. HOTCHKISS, *Mayor.*"

[*Depositions of Samuel Perry and O. M. Spencer.*]

"THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES,
vs.
ANDREW DONNALLY, OF THE FIRM OF STEELE, DONNALLY & STEELES.

In the district court of the United States for the western district of Virginia, holden at Clarksburg.

Deposition of Samuel Perry.

Samuel Perry, a witness produced and sworn on the part of the plaintiffs, and says that he has done business with the late firm of Steele, Donnally & Steeles, and was well acquainted with the

said firm of Steele, Donnally & Steeles, and was well acquainted with said firm, and with the persons composing the same Said firm was composed of Andrew Donnally, Adam Steele, Richard Steele, William Steele, and Robert M. Steele. Richard Steele, of Louisville, and William Steele, stated to deponent that they were members of said firm, and deponent thinks that Andrew Donnally, of Kenahwa, has also. Said firm did business in the year 1817, but how long before or after deponent does not recollect. The firm was engaged in the salt business.

SAML. PERRY.

Deposition of Oliver M. Spencer.

Oliver M. Spencer, a witness produced on the part of the plaintiffs, being duly sworn, deposeth and saith, that he was president of the Miami Exporting Company from the 1st Jan. 1817, to the 1st January, 1821, and before and since those dates. That the firm of Steele, Donnally & Steeles, transacted business with said company from 17th July, 1817, to the 25th May, 1820. That said firm was composed, as this deponent understood and believes, of Adam Steele, Richard Steele, William Steele, Robert M. Steele, and Andrew Donnally. This deponent believes he was so informed both by William Steele, acting partner of the firm at Cincinnati, and by Andrew Donnally. And further this deponent saith not.

O. M. SPENCER.

THE STATE OF OHIO, } sct.
City of Cincinnati. }

I, Elisha Hotchkiss, mayor of the city of Cincinnati aforesaid, not being attorney or of counsel of either of the parties in the foregoing suit, nor in any way interested in the event of the same, do hereby certify that the foregoing depositions of Samuel Perry and Oliver M. Spencer were taken before me on the third day of April, inst. (1832) at the mayor's in said city, at the instance of the plaintiff, to be read in evidence on the trial of the above cause. That said depositions were then and there reduced to writing by the said deponents respectively in my presence, and so also subscribed by said deponents; and that said deponents were by me carefully examined, and cautioned, and sworn, to testify the whole truth relating to the matters in controversy in said suit. That no notification was issued by me to the adverse party, because neither he nor his counsel, nor any agent of his, resides within one hundred miles of the place of taking. And further, that the reason of taking said depositions is, that the said deponents reside at Cincinnati aforesaid, more than one hundred miles from the place of trial. In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, this third day of April, eighteen hundred and thirty-two.

Costs of caption $1 50. Paid by John S. Lytle.

[L. S.] E. HOTCHKISS, *Mayor.*"

The following is a copy of the Appeal Bond taken in this cause, to wit:

Appeal bond.

"Know all men by these presents, that I, Zachariah Jacob, am held and firmly bound unto Andrew Donnally in the just and full

sum of two hundred dollars, current money of the United States of America, for the true payment whereof unto the said Andrew Donnally, his executors and administrators, I bind myself, my heirs, administrators, executors, and assigns, firmly by these presents. Witness my hand and seal this eighth day of September, in the year of our Lord one thousand eight hundred and thirty-two.

The condition of the above obligation is such, that whereas the President, Directors, and Company of the Bank of the United States, plaintiffs in a certain action of debt brought by them in the United States' court for the western district of Virginia, held at Clarksburg, have sued out a writ of error to the Supreme Court of the United States from a judgment rendered by the said court for the western district of Virginia, against them, in favor of the said Andrew Donnally, at a court for said district held at Clarksburg, on the eighth day of September, 1832. Now, if the said plaintiffs in error shall prosecute their writ with effect, and answer all damages and costs if they fail to make their plea good, then this obligation to be void and of no effect, else to remain in full force and virtue.

ZACHARIAH JACOB. [SEAL.]

[*Endorsement.*] "I approve this bond, 8th Sept. 1832.
A. CALDWELL, *Judge W. D. Va.*"

[WRIT OF CITATION, &c.]

The President of the United States of America to the Marshal of the Western District of Virginia, greeting:

Whereas the President, Directors, and Company of the Bank of the United States have sued out their writ of error to a certain judgment given against them on the eighth day of September, in the year of our Lord 1832, and in the fifty-seventh year of the independence of the United States of America, in the district court of the United States for the western district of Virginia, at Clarksburg, upon an action of debt brought by them, the said President, Directors, and Company of the Bank of the United States, against Andrew Donnally, returnable in the Supreme Court of the United States of America on the second Monday in January next. These are therefore to command you, that you make known to the said Andrew Donnally that he be and appear to the said writ of error, in the said Supreme Court, on the first day of the next term thereof, to hear an assignment of errors—and hereof fail not at your peril. And how you shall have executed this writ, make return to the clerk of the district court of the United States for the western district of Virginia, at Clarksburg, on the rule day of the said

Writ of citation.

court for the month of October next; and have then there this writ.

Witness the honorable Alexander Caldwell, judge of the United States court for the western district of Virginia, at Clarksburg, this eighth day of September, in the year of our Lord, one thousand eight hundred and thirty-two, and in the fifty-seventh year of the independence of the United States of America.

[L. S.]

A. CALDWELL.

[*Endorsement.*] I hereby acknowledge service of this citation, Sept. 8th, 1832.

A. DONNALLY.

Teste: Z. JACOB.

Plaintiffs' Costs.		*Defendant's Costs.*	
Attorney, - -	$20 00	Attorney, - -	$20 00
Clerk, - -	74 36	Clerk, - -	75 77⅔
Marshal, - -	12 00		
Tennessee record,	20 06⅔		
Copy Kentucky law,	1 00		
Depositions, -	3 00		
Postage, - -	25		
	$130 67⅔		$95 77⅔

UNITED STATES OF AMERICA, *Western District of Virginia,* } scillicit.

I, Jasper Yates Doddridge, clerk of the United States court for the western district of Virginia, hereby certify the foregoing to be a true and perfect copy of the record and proceedings in an action of debt wherein the President, Directors, and Company of the Bank of the United States are plaintiffs, *are plaintiffs*, and Andrew Donnally is defendant, as fully as the same are of record in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Clarksburg, this 8th day of October, 1832, and in fifty-seventh year of American independence.

[L. S.]

J. Y. DODDRIDGE, *Clerk.*

UNITED STATES OF AMERICA, *sct.*

The President of the United States of America to the Judge of the District Court of the United States for the Western District of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court for the western district of Virginia, before you, between the President, Directors, and Company of the Bank of the United States, plaintiffs, and Andrew Donnally, defendant, a manifest error hath happened,

to the great damage of the said *the* President, Directors, and Company of the Bank of the United States, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of January next in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Alexander Caldwell, judge of the district court of the United States for the western district of Virginia, at Clarksburg, this 8th day of [L. S.] September, in the year of our Lord 1832, and in the fifty-seventh year of the independence of the United States of America.

J. Y. DODDRIDGE,
Clerk U. S. Dist. Court, Western Dist. Va.

September 8th, 1832.

Having taken and approved the appeal bond of Zachariah Jacob, given in this cause, I do allow this writ of error.

A. CALDWELL,
Judge of U. S. Court for Western District Va.

The execution of the within writ appears by the annexed transcript of the record.

J. Y. DODDRIDGE, *Clerk.*